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September 17, 2003

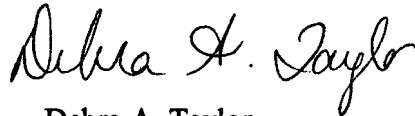
Julia Bilaver
Commission Counsel
FAIR POLITICAL PRACTICES COMMISSION
428 "J" Street, Suite 620
Sacramento, CA 95812

Re: In the Matter of: Danny Lynn Gamel, et al.
FPPC No.: 99/193
OAH No.: N2001020159

Dear Ms. Bilaver:

Enclosed for filing are the original and two copies of *Rudy Michael Olmos' Brief Following Remand by Superior Court*. Please return a conformed copy in the enclosed envelope.

Very truly yours,



Debra A. Taylor
Legal Assistant
to Gary L. Huss

/dat
Enclosures

03 SEP 8 PM 3:24

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Attorneys for Respondent
RUDY MICHAEL OLMOS

BEFORE THE
FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:

DANNY LYNN GAMEL and RUDY
MICHAEL OLMOS,

Respondents.

FPPC No. 99/193

OAH No. N2001020159

Commission Meeting Date: October 2, 2003

RUDY MICHAEL OLMOS' BRIEF FOLLOWING REMAND
BY SUPERIOR COURT

WILD, CARTER & TIPTON
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1 **I. INTRODUCTION**

2 The Enforcement Division has submitted a brief pursuant to procedures set forth in
3 a letter of September 5, 2003. However, neither that letter nor its notice of any deadline to
4 submit a brief were sent to Respondent, who having received the brief of the Enforcement
5 Division responds as follows:

6 **II. PROCEDURAL HISTORY**

7 Investigator Dennis Pellon initiated the investigation of campaign statements and
8 records of contributions in this case by conducting a number of interviews of persons suspected
9 by him to be involved in misconduct. (H.E.¹ 18, p. 4; C.T. pp. 672-680.) Based upon those
10 interviews, a number of conclusions were drawn by that investigator and counsel for the FPPC
11 and, as a result, a Report in Support of a Finding of Probable Cause was prepared and filed with
12 the FPPC on August 29, 2000. (H.E. 18, pp. 1-9; C.T. pp. 672-680.)

13 Counsel for Respondent was notified of the above-referenced report on August 29,
14 2000, offered an opportunity to respond in writing, and to appear with Appellants for a probable
15 cause conference held on October 17, 2000. (See H.E. 18; C.T. pp. 682-698.)

16 The probable cause conference was conducted on October 17, 2000. An order re
17 probable cause was thereafter issued by Executive Director Wayne Strumpfer on October 25,
18 2000. (See H.E. 18; C.T. pp. 707-709.)

19 On January 19, 2001, a formal accusation was filed by the above director against
20 Respondents, thereby initiating formal administrative hearing proceedings. (C.T. pp. 008-013.)

21 An administrative hearing was held on May 30, 2001, before Administrative Law
22 Judge (hereafter "ALJ") Ann Sarli. (C.T. pp. 134-137.) The FPPC was represented at that
23 hearing by attorney Mark Soble, and Rudy Olmos (hereafter "Mr. Olmos") was represented by
24 Fresno attorney, Anthony P. Capozzi. (C.T. p. 138.) Evidence in the form of Exhibits 1 through
25 19 were offered in conjunction with the testimony of eleven witnesses summarized in Section III
26 of this brief. (C.T. pp. 140-671.) All those exhibits were admitted into evidence except for
27

28 ¹"HE" refers to Hearing Exhibits; "C.T." refers to Clerk's Transcript.

1 Exhibits 13 and 16.

2 On June 25, 2001, ALJ Sarli issued her proposed decision (C.T. pp. 043-051),
3 which was then later adopted on September 12, 2001, by FPPC Chairman Karen Getman. (C.T.
4 pp. 70-80.) In the interim between the proposed decision and it being adopted by the FPPC,
5 counsel for each party were allowed to present additional written arguments

6 On September 27, 2001, a petition and request for reconsideration were filed by
7 Mr. Olmos (C.T. pp. 082-085), which summarily denied on October 16, 2001

8 Mr. Olmos then filed his petition for writ of administrative mandamus and order of
9 administrative stay on October 11, 2001. (C.T. pp. 091-130.) His opening brief was filed later on
10 December 31, 2001. The FPPC filed its answer and opposition to that petition on February 11,
11 2002 (C.T. pp. 800-818), and Mr. Olmos followed with his reply brief on February 14, 2002
12 (C.T. pp. 819-825.)

13 On March 21, 2002, a hearing on the writ was held before Judge Kent Hamlin
14 (C.T. pp. 827-829), at which time the writ was denied in part and granted in part. (See Exhibit
15 A.) Dan Gamel, Inc., was found not liable. A portion of the claims against Mr. Olmos were
16 remanded

17 III. STATEMENT OF FACTS

18 A. The Pleadings

19 From the standpoint of considering an appropriate penalty, focus should be on the
20 specific conduct of which Mr. Olmos was accused, and what evidence was offered to support a
21 maximum penalty. Accordingly, Mr. Olmos will first outline the material pleading allegations and
22 then the testimony offered to support or refute those allegations

23 1. Report of Probable Cause

24 Prior to filing the Accusation, a Report in Support of a Finding of Probable Cause
25 was first issued as a prelude to the Accusation being filed. (C.T. pp. 672-680.) In that report, it
26 was alleged by the FPPC that Dan Gamel made four campaign contributions totaling \$3,900 to
27 the Ken Steitz campaign on October 28, 1996. (C.T. pp. 672-673.) One of those contributions
28 was in his name and was conceded to be proper in that report. (C.T. p. 673:2-3.)

1 Since one of the four contributions was conceded to be proper, then in actuality,
2 what was being specifically alleged in the charging document as a violation of the campaign
3 contribution laws were the remaining three separate contributions made by Richard Wright, Frank
4 Kozub, and Rudy Olmos for \$975 each, for a total of \$2,925 in contributions. Although it is
5 alleged above that these "laundered" contributions were made by Mr. Gamel (C.T. pp. 672:24-
6 673:2), actually, that is not accurate, as those contributions were made by three individuals who
7 were alleged to have been reimbursed for those contributions, thereby leading to the FPPC
8 conclusion of "laundering."

9 Based on the above-referenced report (C.T. pp. 672-680), "probable cause" was
10 found to exist on October 25, 2000, by the FPPC Director, Wayne Strumpfer. (C.T. pp. 707-
11 709.) On that basis, then, an administrative Accusation was then filed, continuing formal
12 administrative hearing proceedings.

13 2. The Accusation

14 The Accusation, in Count One (C.T. pp. 008-013), alleges that the conduct of
15 alleged "money laundering" occurred specifically on or about October 28, 1996. (C.T. pp.
16 010:11-13, 011:4-7, 011:21-24; 012:3-4, 012:14-17.)

17 a. Count One

18 As to Count One (C.T. p. 010), it was alleged that on October 28, 1996, Frank
19 Kozub made a contribution of \$975 with check number 7738 to the Steitz campaign. In
20 paragraph 16 of the Accusation, it was alleged that Mr. Kozub was reimbursed for this
21 contribution. (C.T. p. 010.)

22 b. Count Two

23 Count Two (C.T. p. 011) alleges that on October 8, 1996, further laundering
24 occurred when a check was written by Richard Wright for \$975 to the Steitz campaign. (See
25 Accusation, p. 4, ¶¶ 19-20.) It was further alleged specifically that Mr. Wright was reimbursed by
26 Mr. Gamel for this contribution to complete the laundering. (¶ 22.)

27 ///

28 ///

1 **c. Count Three**

2 In Count Three (C.T. p. 011), it was alleged in the accusation that on October 28,
3 1996, the laundering occurred when Mr. Olmos made a contribution of \$975 to Mr. Steitz (§ 25)
4 with check number 1286, and that he was reimbursed for making that contribution.

5 **d. Count Four**

6 In Count Four (C.T. p. 012), it is alleged that Mr. Olmos acted as an intermediary
7 for a campaign contribution of \$975. It appears that Count Four was the only accusation made
8 against Mr. Olmos, an employee of Mr. Gamel.

9 **3. Proposed Decision, Adopted Decision, and Reconsideration**

10 On June 25, 2001, after the hearing was concluded, ALJ Ann Sarli rendered a
11 proposed decision (C.T. pp. 043-051) which later became the adopted FPPC decision in this case
12 (C.T. p. 772.) Mr. Olmos then filed a Petition for Reconsideration raising contentions that: a)
13 the weight of the evidence did not support the findings of liability against the corporation, Dan
14 Gamel, Inc., b) the evidence was insufficient to support a finding of laundering, and c) the
15 penalties were excessive. (C.T. pp. 082-084.) On October 16, 2001, the executive director of the
16 FPPC, Mark Krausse, summarily denied the petition for reconsideration. (C.T. p. 792.)

17 **4. Writ of Mandamus Granted and Denied In Part**

18 In a hearing before Judge Kent Hamlin in the Fresno County Superior Court, it
19 was determined that, in fact, there was no evidence to support a liability finding against the
20 corporation, Dan Gamel, Inc., and it appeared that the penalty imposed on Mr. Olmos was
21 excessive. (R.T.² pp. 4-17.) However, all other findings were affirmed. See also his order
22 attached as Exhibit A.

23 **B. Hearing Exhibits**

24 The following exhibits were introduced at the hearing by the parties:

25 Exhibit 1 is Resolution No. 96-318 of the City Council of Fresno as a resolution
26 confirming that Ken Steitz received the majority of votes cast for the office of Council, District
27

28 _____
 ²“R.T.” refers to Reporter’s Transcript of March 21, 2002, hearing.

1 No. 4, in the election held on November 5, 1996. (C.T. pp. 430-432.)

2 Exhibit 2 reflects a City of Fresno ordinance amendment to Section 2-2208 of the
3 Fresno Municipal Code, inter alia, limiting campaign contributions to \$1,000, and other related
4 enforcement provisions of that code. (C.T. pp. 496-505.)

5 Exhibit 3 reflects the campaign statement filed by Kenneth Steitz on January 31,
6 1997. (C.T. 509-561.) This exhibit includes a Schedule A, which shows the various individual
7 campaign donations, including specific donations of Dan Gamel, Frank Kozub, David G. Little,
8 Rudy Olmos, and Richard Wright, found on pages 13 through 15 of that schedule. The donation
9 of Mr. Gamel is shown as having been received on October 29, 1996, in the amount of \$975.
10 (C.T. p. 521.) On the same date (October 29, 1996), the donations of Mr. Kozub for \$975,
11 Mr. Little for \$900, Mr. Olmos for \$975, and Mr. Wright for \$975, are all shown on those pages.
12 (C.T. p. 522.) No other donations reflected in that exhibit appear to be pertinent to this appeal.
13 No reference to a \$5,000 donation from Mr. Gamel is mentioned in this report.

14 Exhibit 4 (C.T. p. 562) appears to be a duplicate of a portion of Exhibit 3 in that it
15 shows page 14 of Schedule A above, to Exhibit 3 and three of the donations brought into
16 question.

17 Exhibit 5 purports to be the subpoenaed personal bank records for a bank account
18 of Danny L. Gamel with United Security Bank. (C.T. pp. 563-565.) This exhibit includes a copy
19 of a \$5,000 check, number 0857, made out to "Cash" on October 28, 1996.

20 Exhibit 6 (C.T. pp. 566-573) reflects additional information from United Security
21 Bank for the account of Danny L. Gamel obtained by subpoena. Included in this exhibit is a copy
22 of the same \$5,000 check to cash on October 28, 1996, and the donation check of \$975 from
23 Mr. Gamel's account. (C.T. p. 567.) This exhibit also shows a listing of all of the checks written
24 from this personal account during portions of the months of October, November, and December
25 1996, for the exact dates shown in the monthly bank statements.

26 Exhibit 7 (C.T. p. 574) represents portions of the bank records of Rudy Olmos
27 with Cal Fed Bank. Found on the fourth and fifth page of this exhibit is a copy of the relevant
28 donation check, number 1286, to Ken Steitz in the amount of \$975 by Mr. Olmos. (C.T. pp. 577-

578.) Monthly bank statements for that it from approximately August 1996 to January 1997 are also attached and shown. (C.T. pp. 579-600.)

Exhibit 8 (C.T. pp. 601-621) reflects the subpoenaed bank records of Frank Kozub. A copy of the relevant donation check, number 7738, by Frank Kozub for Ken Steitz, dated October 28, 1997, is shown on page 3 of that exhibit. (C.T. p. 603.) The date of this check is approximately one year after all of the other checks drawn into question in this case. However, among the papers of this exhibit, on page two of the November 1996 statement is a record of check number 7738 clearing that bank during that month. (C.T. p. 608.) It also shows a payroll check in the amount of \$2,017.75 being deposited into Mr. Kozub's account on November 9, 1996. (C.T. p. 607.)

Similar to Exhibits 7 and 8 is Exhibit 9, the bank statements for Richard Wright from United Security Bank. (C.T. pp. 622-625.) Check number 1338 from that account written on October 28, 1996, to Ken Steitz for \$975 is shown (C.T. p. 623), as well as one monthly statement listing that relevant check.

Exhibit 10 (C.T. pp. 626-653) reflects the subpoenaed bank records of David G. Little from California Bank & Trust. A number of deposits and checks are shown which are not pertinent. However, Exhibit 11 (C.T. p. 654), attached as the last page of this exhibit, purports to show a check, number 0108, for \$900³ made payable to Ken Steitz on October 28, 1996, by David Little from a different account with Schwab One.

Exhibit 12 (C.T. pp. 655-660) reflects enlarged copies of the same checks in question. The first is check number 0856 for \$975 from Mr. Gamel's account with United Security Bank, and then a check for \$5,000 from the same account, on the same date, and next in order of sequence as check number 0857. Also included are the purported donation checks of Richard Wright, Rudy Olmos, Frank Kozub, and David Little again.

Exhibit 14 are campaign contribution forms filled out and signed by the donors of the above checks providing name, address, occupation, and telephone number information in

³Note that the amount of this check differs from the alleged amount.

1 conjunction with their donation.

2 Exhibit 15 (C.T. pp. 661-668) purports to be telephone records of Ken Steitz for
3 the time frame of December 1996.

4 Exhibit 18 is a summary of pleadings purportedly for jurisdictional purposes,
5 including of the report in support of a finding of probable cause, a letter and enclosures to
6 Mr. Huss, proofs of service, and an order re probable cause. (C.T. pp. 669-670.)

7 Finally, Exhibit 19 is a reporting statement dated October 29, 1996, from Ken
8 Steitz. From the record, there is confusion whether Exhibits 14, 17, and 19 were admitted into
9 evidence at the administrative hearing.

10 **C. Hearing Testimony**

11 The following summary of the hearing testimony, witness by witness in the order
12 they testified, is provided relative to the pertinent issues raised in this appeal.

13 **1. Rebecca Klisch**

14 Ms. Klisch was a City Clerk for Fresno who worked for the Fr City Council
15 directly. (C.T. pp. 154-161.) She was a custodian of records for the Fresno City Council
16 campaign disclosure file from which Exhibit 1 was produced. (C.T. p. 155:9-13.) During her
17 testimony, it was stipulated that Ken Steitz was a candidate in the November 1996 general
18 election and that he won that election. (C.T. p. 157:1-11.) She testified that there were campaign
19 contribution limits for the Fresno City Council election. (C.T. p. 160:17-25.) Ordinance B-83,
20 number 92-88, reflected that limit. (C.T. 161:1-10.) She was briefly cross-examined on some of
21 the listed contributions involved in this (C.T. pp. 163-164.)

22 **2. Dennis Pellon**

23 Mr. Pellon was the chief investigator in this case who has worked for the FPPC for
24 12 years. (C.T. pp. 165:14-16.) He initially reviewed the campaign statements involved in this
25 case (C.T. pp. 171:20-25), and noticed a pattern in the disclosure statement in that contributions
26 of similar amounts in the \$900 range were made. (C.T. pp. 173:5-10.) He then requested from
27 Mr. Steitz's committee the records which would have included the contributor checks. (C.T. p.
28 174:11-13.) In that regard, he then reviewed copies of the donation checks of Dan Gamel,

1 Richard Wright, Rudy Olmos, Frank and Bridgette Kozub

2
3 In reviewing the bank statements of the various suspected persons, Mr. _____
4 claimed that he found that the amounts of cash withdrawn were less in that relevant period than in
5 the previous periods. (C.T. p. 194:1-21.) As to Mr. K _____, for the two week period following
6 the campaign contribution, Mr. Pellon did not find any cash withdrawals from his account. (C.T.

7
8 As to Rudy Olmos, Mr. Pellon found no cash withdrawals by Mr. Olmos during
9 the 10 days following the campaign contribution he made. (C.T. p. 195:4-16.)

10 _____ investigator also determined that during the time frame of the contribution by
11 Mr. Kozub, Mr. K _____ had made _____ account

12
13 Investigator Pellon
14 pattern immediately following his contribution.
15 this investigator that when he claimed he was reimbursed, _____ 1 re-depo
16 _____ account _____ interview.
17 statement and told Mr. Pellon that he had been reimbursed about 60 to 90 days after the
18 contribution. (C.T. p. 210:13-19.) Mr. K _____
19 did with the claimed reimbursement money, but asserted that he had received _____
20 10.) Mr. Pellon could not find any evidence, however, that he deposited it into his bank account.
21 (C.

Investigator Pellon admitted _____
23 _____ Gamel personal bank account that were written for amou
24 1) _____ it appeared to be a regular pattern of cash withdrawals by Mr. Gamel from his
25 personal account

26 **Glendon Davis**

27 Ms. Davis was employ _____ as Mr. Gamel's personal bookkeeper. In that capacity,
28 she maintained his personal check register. (C.T. pp. 245:11-16.) To her knowledge, Dan Gamel

1 would never write any of his own checks. (C.T. p. 246:23-25.) She reconciled his personal
2 checking statements. (C.T. p. 248:22-25.)

3 **4. Lee Brand**

4 During the testimony of Mr. Brand, it was stipulated at the hearing that pursuant
5 to Mr. Gamel's direction, Ms. Davis issued a \$5,000 check to the Ken Steitz for council campaign
6 and that this check was returned to Mr. Gamel unnegotiated.

7 Mr. Brand was a volunteer campaign manager for Ken Steitz. (C.T. p. 265:8.) He
8 recalled discussing the campaign limit with Mr. Gamel and suggesting that he could get a group of
9 people to donate but that there was a limit of \$1,000 each. (C.T. p. 268:1-7.) He did not recall
10 seeing a check for \$5,000 from Mr. Gamel, but felt that if they had received one, it would have
11 been sent back. (C.T. p. 276:14-19.)

12 **5. Richard Wright**

13 Mr. Wright was the chief financial officer for Dan Gamel, Inc. (C.T. p. 284:11-
14 14.) He recalled being questioned by Investigator Pellon and, at first, did not remember the
15 donation check he had When he saw the check for \$975, it refreshed his recollection.
16 (C.T. p. 287:11-15.) He remembered calling Mr. Gamel who was as perplexed as he was. (C.T.
17 p. 288:2-9.)

18 Mr. Olmos told Mr. Wright that he had made a donation and was "catching up" for
19 all the years he had not made donations. (C.T. pp. 291-292.) When asked by Mr. Olmos if he
20 was reimbursed for his donation, Mr. Wright recalled that he told Mr. Olmos that he "did not
21 remember." (C.T. pp. 293:20-25.) He looked in his records and could not find any deposit or
22 anything like that. He went on to speculate in this conversation with Mr. Olmos that, knowing
23 Mr. Gamel, he could have been reimbursed. (C.T. p. 294:10-13.)

24 However at the hearing, under oath, when asked if he had any recollection of
25 Mr. Gamel ever asking him to make a political contribution, Mr. Wright said, "NO." (C.T. p.
26 295:17-21.) When further pressed as to whether he could have been reimbursed with a check for
27 making the campaign contribution for Mr. Steitz, he testified, categorically, that he knew that he
28 was not, because he only has one account and there was no deposit to reflect that. (C.T. p.

1 297:1-7.)

2 More importantly, on cross examination, Mr. Wright stressed that he never
3 admitted or denied the reimbursement. He did not remember. When asked, point blank, if he
4 recalled being given cash by Mr. Gamel for this contribution he finally said, "NO, I DON'T."
5 (C.T. p. 300:22-24.)

6 **6. Ken Steitz**

7 Mr. Steitz was the Fresno City Council candidate. He testified that he had met
8 some of Mr. Gamel's employees and that it was possible that Mr. Gamel may have told him he
9 was going to ask some of his employees to contribute to his campaign. (C.T. pp. 316-317.)

10 **7. David Little**

11 Mr. Little worked as the general manager of Dan Gamel's Health and Racquet
12 Club in 1996. (C.T. p. 343:9-10.) He recalled making a campaign contribution in October 1996,
13 and that Mr. Gamel had encouraged him to make the contribution. (C.T. p. 343:8-22.) He
14 decided to make the contribution because he was "new to the area" and Mr. Gamel had asked him
15 to make the donation. He was trying to become more involved in business in this town and
16 ed "to get involved." (C.T. p. 345:2-11.) He had just retired from the National Football
17 League (NFL) and felt that his donation was an investment for his future in the community, so he
18 really did not think too much of that and, at the time, he was "financially okay." (C.T. p. 346:7-
19 11.)

20 When asked if he was reimbursed for the donation by Mr. Gamel, he testified that
21 he had no recollection of that. (C.T. p. 347:1-10.)

22 He was asked about some of his cash deposits into his bank account, and explained
23 that he owned three rentals at that time and his tenants often paid him cash. (C.T. p. 351:1-12.)

24 **8. Richard Egan**

25 Mr. Egan was treasurer for the Ken Steitz campaign. (C.T. p. 354:12-18.) He
26 testified about how the employer information was put on Exhibit 14 documents. (C.T. pp. 355-
27 357.)

28 ///

1 **9. Frank Kozub**

2 Mr. Kozub testified that in October of 1996, he was employed by Mr. Gamel (C.T.
3 p. 367:23-25), at which time he was asked to make a contribution to Ken Steitz. (C.T. p. 368:4-
4 6.)

5 He claimed that Mr. Gamel offered to reimburse him for making that contribution
6 (C.T. p. 368:17.) He claimed that Mr. Gamel gave him his money and also money for Mr. Olmos.
7 (C.T. p. 369.) He could not recall the denominations of the money but assumed they were mostly
8 hundreds. (C.T. p. 370:6-9.) He felt that he had written his donation check in 1996 even though
9 it said 1997, and could not explain that date discrepancy. (C.T. p. 371:8-14.)

10 He admitted that he had been terminated from his employment at Dan Gamel, Inc.,
11 after the contribution was made, in the end of October 1999. (C.T. pp. 373:6-17, 374.) When
12 asked if any witness was present when he claimed to have received money from Mr. Gamel for
13 reimbursement, he stated that no one was present. (C.T. pp. 377:18-378:1.)

14 **Interesting!**

15 Mr. Gamel supposedly gave him money for himself and Mr. Olmos, and no one else was present,
16 he admitted that he was not sure, and that in thinking more about it, Mr. Olmos and he were
17 discussing their bonus checks, so when he had told Investigator Pellon about being reimbursed in
18 45 days, it was probably the bonus checks they were looking for. He admitted telling the
19 investigator that he had deposited that bonus money. (C.T. p. 378:6-25.)

20 Mr. Kozub could find no documentation that he had deposited the money he
21 received. (C.T. p. 379.) Somewhat confusingly, Mr. Kozub then went on to insist that he
22 thought he had deposited the \$905 into his account. (C.T. p. 379.) Later, he explained that the
23 \$905 put on his check was the amount he was asked to make out the check for by Mr. Gamel, not
24 \$975. (C.T. p. 386:7-19.)

25 **10. Dan Gamel**

26 Mr. Gamel testified at his hearing that he did not remember telling any of the
27 alleged people in this case that they would be reimbursed. He insisted that he did not reimburse
28 them. (C.T. p. 396:14-25.)

11. Rudy Olmos

Mr. Olmos also testified at this hearing, and stated that he and Mr. Kozub looked at the contributions as a long term investment. (C.T. p. 404:19-23.) He recalled that Mr. Gamel had asked him to make the contribution, but had not been promised to be reimbursed, and was not given any cash back afterwards. (C.T. pp. 405:20-25, 406:2.) He made the contribution because it was a fun thing to do, he knew how Mr. Gamel was involved in the community, and he saw it as an investment on his part for the long term. Mr. Gamel had asked him to make other charitable contributions. (C.T. p. 406:11-25.)

When specifically asked if Mr. Gamel reimbursed him for the \$975 contribution he made to Mr. Steitz, Mr. Olmos said, "NO, HE DID NOT." (C.T. p. 407:11-22.)

IV. ARGUMENT

The theory of the FPPC was that Mr. Gamel had asked his employee, Mr. Olmos, to make a contribution, and then later reimbursed Mr. Olmos for it. If credible evidence could be presented to show that a reimbursement really occurred, that would support this finding. Absent such credible evidence, there was no evidence to support this finding.

Mr. Gamel testified that he did not make any such reimbursement. (C.T. p. 396:14-25.) Mr. Olmos testified that he made his contribution as a long term investment, and recalled that Mr. Gamel had asked him to make the contribution, but had not promised to reimburse him and, in fact, was not given any cash back later by Mr. Gamel. (C.T. pp. 404-405.) He made his contribution because it was a fun thing to do, he knew how Mr. Gamel was involved in the community, and he saw it as an investment on his part for the long term. Mr. Gamel had asked him to make other contributions as well. (C.T. p. 406:11-25.)

However, when specifically asked if Mr. Gamel reimbursed him for his \$975 contribution, he testified, "NO, HE DID NOT." (C.T. p. 407:11-22.)

Thus, the two persons who purportedly were involved in the alleged "laundering" of this donation each denied that it had occurred. No bank record evidence of Mr. Olmos supported this reimbursement allegation.

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1 When Mr. Kozub was pressed to explain this isolated conversation he claimed to
2 have had with Mr. Gamel about the alleged reimbursement for the contribution, he finally
3 admitted that he was "not sure" and that in thinking more about it, he and Mr. Olmos were
4 actually discussing their bonus checks, and it was probably the bonus checks that were being
5 discussed. He admitted telling the investigator that he had deposited that bonus money. (C.T. p
6 378:6-25.) In short,

7 Mr. Kozub was a witness who could not keep his facts straight and who, as a disgruntled former
8 employee, had a motive to lie and actually contradicted himself on many material points.

9 Looking at the larger picture, the theory of the FPPC was that four employees had
10 been approached, asked to contribute by Mr. Gamel, and were all later reimbursed for their
11 contributions to Mr. Steitz' campaign. However, there was no evidence to support this theory as
12 to David Little and Richard Wright. Further, Mr. Olmos denied that it had occurred. That means
13 that of the four persons who were alleged to have been reimbursed, there was no competent
14 evidence that three actually were.

15 Judge Hamlin vacated the prior order imposing a maximum fine on Mr. Olmos
16 with a directive by this agency to complete its assessment of factors in aggravation and mitigation
17 and to **reassess the appropriate fine**. The implication in his order, especially since it was argued
18 that this penalty was excessive, was for the FPPC to revisit that issue. On the surface, the penalty
19 imposed on Mr. Olmos appeared to be excessive as a maximum fine on a first time violation.

20 Mr. Olmos contends that the penalty issue should not be decided without taking
21 additional evidence. The hearing that was held before was as to liability, not punishment.
22 Mr. Olmos denied laundering a contribution and, accordingly, there was no evidence present as to
23 any of the consideration for penalty. The record is devoid of any evidence being offered by
24 Mr. Olmos to that end.

25 Since the trial court had reversed and remanded this finding and requested that the
26 FPPC reassess this penalty, it would only seem reasonable to conclude that the trial court found
27 the record devoid of sufficient evidence upon which to support such an excessive penalty. For
that reason, it makes sense at this point to have a further hearing at which time Mr. Olmos would

1 be afforded a due process opportunity to address the numerous factors that the court expects the
2 FPPC to consider on remand. To skip past that procedural opportunity for Mr. Olmos would
3 circumvent the intent of the court, and likely cause the matter to be reversed and remanded again.

4 **A. Severity of Violation**

5 At this point, Judge Hamlin has found sufficient evidence to support a violation
6 and, accordingly, the liability issue is not contested at this point. Mr. Olmos does not dispute that
7 campaign money laundering is a serious or significant violation of the Act. However, where he
8 and the FPPC part company is on the issue of penalty. The FPPC apparently contends that any
9 violation of this provision of the Act warrants a maximum penalty assessment regardless of the
10 circumstances or severity or amount involved. In contrast, Mr. Olmos contends that violations of
11 this portion of the Act can involve a variety of conduct and varying circumstances. Some
12 violations are more egregious than others. The fact that a violation is found does not necessarily
13 mean that the conduct was particularly "egregious" in the spectrum of possible conduct. In this
14 case, at issue is a \$975 donation by an employee after he was asked by his employer to make that
15 donation. There was no evidence that they conspired over this donation. The notion of a
16 calculated conspiracy is simply the conclusion of the FPPC. More than likely, either out of loyalty
17 or fear as an employee, Mr. Olmos simply did as he was asked or directed to do by his
18 employer. It is as simple as that. Mr. Olmos had nothing to gain, other than maintaining his job
19 and the good will with his employer.

20 In providing for a penalty up to a maximum of \$2,000 for each violation, the
21 legislature must have intended that some scale of penalty severity be utilized by the FPPC
22 Otherwise, it would simply have enacted a law that stated that any violation would result in a set
23 penalty of \$2,000 regardless of its severity.

24 A number of considerations should go into any assessment of the severity of the
25 violation. For example, the amount of money should be considered. A small contribution might
26 be viewed differently than a substantial contribution because the impact that contribution could
27 have would vary in corrupting the process. Here, the contribution was small. Second, the
28 number of acts or contributions by that person should be considered. Multiple laundering by one

individual should be viewed more seriously than a first time offense. Here, there were not multiple violations by Mr. Olmos. This was the first and only violation on his part. Third, the sophistication and method used should be considered. Where an elaborate scheme is used, that would be more serious as opposed to a straight forward donation that was simply made upon request. Mr. Olmos did not conceal his donation. He simply responded to his employer's request and made the donation. There was no evidence that he did or said anything more than that.

Thus, the seriousness of the conduct can be both an aggravating and mitigating factor. Here, Mr. Olmos contends that as a first time offender, given the amount involved for a city council race and the fact that he made a donation in response to his employer's request, his conduct is more mitigating than aggravating.

B. Intent to Conceal, Mislead

Mr. Olmos made a donation at the request of his boss. It is as simple as that. There was no evidence of any intent on his part to conceal that donation. He simply wrote out the check and made the donation. He did not alter any reporting statements or destroy any evidence. The FPPC never gathered and presented any evidence of any concealment of that check or payment, or any conversation between Mr. Gamel and Mr. Olmos.

If there was an intent to avoid the campaign laws, Mr. Olmos submits that it was not his intent. He had no agenda or anything to gain. He simply responded to a request by his employer that a donation be made.

Interestingly, there was no evidence of any reimbursement being made other than the confused recollection of Frank Kozub that some money was given to Mr. Olmos, which he later said was a bonus payment, not the reimbursement of a donation.

Thus, Mr. Olmos submits that if there was an intent to conceal the source of a donation, that intent was not his. If there was an intent to mislead, it was not his intent. It is more reasonable that another party to this action had that intent on his own and simply approached employees to accomplish his own sole agenda, not the agenda of many.

The FPPC does not contend that Richard Wright, Frank Kozub or David Little had any such intent to conceal or mislead, and yet they were in no different position than Mr. Olmos.

1 Are we to believe that they did not have that intent, but for some reason Mr. Olmos did? Further,
2 the FPPC would argue that because Mr. Olmos said he did not get reimbursed, that he were
3 deceptive in his testimony. However, following the rationale of the FPPC, then was Richard
4 Wright and David Little also deceptive?

5 The truth of the matter is that Mr. Olmos was not reimbursed. There was no
6 evidence of any reimbursement actually being paid by any documented instrument or transfer.

7 **C. Deliberate Versus Negligent Violation**

8 Mr. Olmos had nothing to gain by making his donation, other than to keep his boss
9 happy. He had never been involved in such a donation in the past. He likely did not know all of
10 the laws applicable to political donations. He simply responded to a donation request and made
11 it.

12 Mr. Olmos' donation was one part of a multiple series of requests for donations by another person
13 who had his own separate agenda.

14 The FPPC characterizes this other person as the "mastermind." Said another way,
15 it was this other person who had the idea and simply tried to carry it out by asking people he
16 knew to donate to his candidate. There was no evidence that any scheme was discussed or that
17 any of the contributors knew that it might be considered improper to make a donation that way.
18 In each case it was as simple as one person having the idea, and that same person asking his
19 employees to make a donation without discussing it further. There was no intimation or hint that
20 they would be viewed as disloyal employees for not donating to the candidate. It is more
21 probable that each subjectively felt that they should make the donation because it was their boss
22 who was making the request.

23 In short, the violation by Mr. Olmos was not the result of any deliberate thought
24 on his part to violate any laws. Rather, it was the result of his own carelessness in responding to
25 such a donation request. There is a distinction to be drawn between the person who knowingly
26 discusses a campaign laundering scheme with another and agrees to assist, versus a person who is
27 asked by his boss to make a donation for an unexpressed agenda by the other party to launder a
28 donation, and who then simply responds by making that donation. As such, this factor is more

mitigating than aggravating as to Mr. Olmos.

D. Good Faith Consult

The fact is that no one consulted with the FPPC or any governmental agency regarding the donations in question. Mr. Olmos' part was not so complex or sophisticated that there was any thought of circumventing the campaign contribution laws. Had he questioned his contribution and then made it, that might tend to show aggravation. However, here the facts were that his involvement was rather simple and isolated. He was simply one of several employees who were asked to make a contribution to the employer's candidate of choice. He simply responded without further thought. He likely did not know there was any problem then with his donation since he made it in his own name and was not trying to conceal his own donation.

E. Prior Record of Enforcement

The fact that this is a factor of consideration supports the contention above that the FPPC should allow for some room in its punishment to increase or enhance that punishment for repeat offenders. The FPPC is so intoxicated with the fact that a violation has occurred that it tries to insist that a maximum penalty is warranted. What is said about Mr. Olmos could be said about anyone who violates this law, and thus if we follow that rationale, maximum penalties would be the order of the day regardless of the circumstances. Unlike the FPPC, Judge Hamlin disagreed and concluded that the penalty seemed excessive on its face, and that the record should show due consideration of all of the above factors to support such a determination.

V. CONCLUSION

The FPPC is free to interpret the record in any light it chooses and has to date. At this point, the issue is whether a penalty should be imposed on Rudy Olmos for his violation. The violation occurred, however a penalty less than the maximum is in order. The FPPC can attempt at this point to do what is fair and reasonable in light of the record, or it can ignore the letter and spirit of Judge Hamlin's order and simply maintain its original agenda and do

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Fresno, California 93755-6339

1 what it feels it can get away with. In the end, Mr. Olmos' arguments are not likely to be properly
2 considered by the FPPC.

3 Dated: September 17, 2003

WILD, CARTER & TIPTON
A Professional Corporation

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5 By 
6 GARY L. HUSS, Attorneys for Respondent,
7 RUDY MICHAEL OLMOS
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FILED

MAY 16 2002

FRESNO COUNTY COURTS
By _____
DEPT 31

Attorneys for Respondents
FAIR POLITICAL PRACTICES COMMISSION,
STATE OF CALIFORNIA and KAREN GETMAN

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO, CENTRAL DIVISION

DANNY LYNN GAMEL,
RUDY MICHAEL OLMOS, and
DAN GAMEL, INC.,

Petitioners.

Case No. 01-CE-CG 03495

ORDER

FAIR POLITICAL PRACTICES
COMMISSION, STATE OF
CALIFORNIA, KAREN GETMAN,
Chairman, and DOES 1 through 5,
inclusive.

Respondents.

Petitioners' Writ of Administrative Mandamus and Order Staying Administrative Decision During Appeal was heard at its regularly scheduled hearing on March 21, 2002, in Department 31, of the above entitled court, Honorable W. Kent Hamlin presiding. Gary L. Hu appeared as counsel for petitioners, and Kathleen A. Lynch, Deputy Attorney General, appeared as counsel for respondents. The court made its ruling from the bench and issued a Minute Order on April 2, 2002. (Exhibit A.) The court having considered the written and oral arguments and

being fully advised on the matter hereby orders

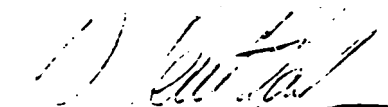
IT IS HEREBY ORDERED

The administrative order and findings against Dan Gamel, the individual, are affirmed. The request to stay the \$6,000 penalty assessed against Dan Gamel, the individual, is denied and the money is now due. The order and administrative findings with respect to the \$6,000 penalty are affirmed.

2. The administrative order and findings against Dan Gamel, Inc. are vacated based on lack of substantial evidence in the record.

3. The administrative findings and order against Rudy Olmos are affirmed with respect to liability. The administrative order and findings with respect to the fine amount against Rudy Olmos are vacated and remanded to the agency to complete its assessment of factors in aggravation and mitigation and to reassess the appropriate fine and issue a written statement with respect to the basis for whatever fine the agency imposes.

DATED _____



Honorable W. Kent Hamlin
Judge of the Fresno Superior Court

SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO
Civil Unlimited Department, Central Division

Entered by:

TITLE OF CASE:

Danny Lynn Gamel, et al V. Fair Political Practices Commission, et al.

MINUTE ORDER

Case Number:

01CECG03495

Hearing Date: March 21, 2002

Hearing Type: Writ of Administrative Mandamus & order Staying

Department: 31

Judge/Temporary Judge: W K Hamlin

Court Clerk: L Clay

Reporter/Tape: J Mitchell

☐ Con

Appearing Parties:

Plaintiff: Danny Lynn Gamel, et al.

☒ appearing on behalf of Pl

Defendant: Fair Political Practices Commission, et al.

☒ appearing on behalf of D

☐ Off Calendar

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The order against Dan Gamel, the individual, is affirmed. There is not an order to stay the order to pay \$6,000.00 and it is now affirmed. The court affirms the administrative findings and orders with respect to that.

The order versus Dan Gamel, Inc., is vacated based on the lack of substantial evidence in the record to support it.

The order with respect to the fine amount as to Rudy Olmos only is vacated and remanded to the agency for it to complete its assessment of factors in aggravation and mitigation and to reassess the appropriate fine and issue a written statement with respect to whatever fine is then imposed.

CASE TITLE

CASE NUMBER:

Danny Lynn Gamei, et al. V Fair Political Practices Commission, et al.

01CECG03495

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the Minute Order was mailed first class, postage fully pre-sealed envelope addressed as shown below, and that the notice was mailed at Fresno, California, on:

Date: April 2, 2002

Clerk, by

Gary L Huss
WILD, CARTER & OLIVER
P O Box 16339
Fresno, CA 93755-2131

Kathleen A Lynch
Deputy Attorney General
P O Box 944255
Sacramento, CA 94244-2550

CASE TITLE

Danny Lynn Gamel, et al. V Fair Political Practices Commission, et al.

CASE NUMBER:

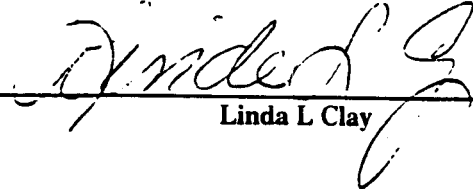
01CECG03495

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the foregoing was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed at 5-21-02, California, on:

Date: May 21, 2002

Clerk, by



Linda L Clay

Deputy

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Kathleen A Lynch
Deputy Attorney General
P O Box 944255
Sacramento, CA 94244-2550

☐ Clerk's Certificate of Mailing Additional Address Page Attached

CLERK'S CERTIFICATE OF MAILING

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of Fresno, State of California. I am over the age of 18, and not a party to the action within; my business address is: 246 West Shaw Avenue, Fresno, California 93704.

On September 17, 2003, I served the document(s) described as:

**RUDY MICHAEL OLMOS' BRIEF FOLLOWING REMAND
BY SUPERIOR COURT**

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope at: Fresno, California, addressed as follows:

**Steven Benito Russo
Chief of Enforcement
Julia Bilaver
Commission Counsel
FAIR POLITICAL PRACTICES
COMMISSION
428 "J" Street, Ste. 620
Sacramento, CA 95812**

 X (BY MAIL) I am readily familiar with this business's practice for collection and processing of correspondence for mailing, and that correspondence, with postage thereon fully prepaid, will be deposited with the U. S. Postal Service on the date hereinabove in the ordinary course of business, at Fresno, California.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee(s).

(BY OVERNIGHT COURIER) I caused the above-referenced envelope(s) to be delivered to an overnight courier service for delivery to the addressee(s).

(BY FACSIMILE) I caused the above-referenced document(s) to be faxed to the offices of the addressee(s).

Executed on September 17, 2003, at Fresno, California.

 X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


DEBRA A. TAYLOR